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BANNER & WITCOFF, LTD.
1100 13th STREET, N.W.
SUITE 1200
WASHINGTON, DC 20005-4051

EXAMINER	
CASCHERA, ANTONIO A	
ART UNIT	PAPER NUMBER
2628	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/909,630	KAMEN, YAKOV	
	Examiner	Art Unit	
	Antonio A. Caschera	2628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *27 August 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-7,11-17 and 21-27* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-7,11 and 21-27* is/are rejected.

7)☒ Claim(s) *12-17* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *31 December 2001* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Priority

1. This application claims the benefit of application no. 60/241,885, filed 10/19/2000.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 1-7 and 21-27 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim(s) 1-7 is/are rejected under 35 U.S.C. 101 as not falling within one of the four statutory categories of invention. While the claims recite a series of steps or acts to be performed, a statutory "process" under 35 U.S.C. 101 must (1) be tied to another statutory category (such as a particular apparatus), or (2) transform underlying subject matter (such as an article or material) to a different state or thing (Reference the May 15, 2008 memorandum issued by Deputy Commissioner for Patent Examining Policy, John J. Love, titled "Clarification of 'Processes' under 35 U.S.C. 101"). The instant claims neither transform underlying subject matter nor positively tie to another statutory category that accomplishes the claimed method steps, and therefore do not qualify as a statutory process.

In reference to claim 21 (and all dependent upon claim 21 claims), the language of the claims raise questions as to whether the claims are directed merely to an abstract idea that is not tied to a technological art, environment or machine which would result in a practical application

producing a concrete, useful, and tangible result to form the basis of statutory subject matter under 35 U.S.C. 101. Specifically, newly implemented practices and procedures directed towards the analysis of claim language as per 35 U.S.C. 101 question the antecedent basis for the claimed terminology of a "physical machine-readable storage medium embodying a sequence of instructions…" as recited in claim 21. The specification of the instant application does not explicitly define the term, "physical machine-readable storage medium" however it does mention a "computer-readable medium drive" capable of storing instructions for implementing the processing of data as detailed in the claims (see page 8, paragraphs 17-18 of Applicant's specification). The specification does clearly suggest to one of ordinary skill in the art that such a "physical machine-readable storage medium" could be one of signals, or other forms of propagation and transmission media (page 8, paragraph 18 of Applicant's specification) which fail to be an appropriate manufacture under 35 U.S.C. 101 in the context of computer-related inventions and therefore requires the rejection of claims 21-27. (see *Response to Arguments* below)

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 1, 11 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schein et al. (U.S. Patent 6,075,575).

In reference to claim 1, Schein et al. discloses a method comprising:

(a) receiving a selection of an object displayed in an electronic programming guide (EPG) (see column 5, lines 6-47, column 8, lines 37-39, 50-52, column 9, lines 17-18, 27-36 and Figures 2 and 4A wherein Schein et al. discloses a method for using television schedule information using a remote control whereby the television schedule information GUI comprises vertical and horizontal scroll bars. Such scroll bars manipulated via the remote control thumb device and further control buttons. The Office interprets that as such a scrolling button(s) is depressed it is inherently selected as its visual appearance is changed to conform to television schedule data (see #32, 120 of Figure 4A).);

(b) *modifying a non-textual attribute associated with the object by an incremental amount for each of at least two times that the object is selected, wherein each modification of the non-textual attribute corresponds with a number of times the object has been selected*, wherein each modification of the attribute includes changing a visible characteristic of the object and wherein each modification results in a different appearance of the object (see column 9, lines 17-18, 27-36 and #120 of Figure 4A wherein Schein et al. discloses "selection" of the scroll bar via a selection of a remote control scroll button, which in turn forces the scrolling of television schedule information to be changed. Also, Schein et al. explicitly discloses the scroll bar being visually proportional to the total information in the television schedule program matrix thereby changing the visual appearance of the scroll bar to conform to the information displayed in the matrix.); and

(c) modifying the display of the object in accordance with the modified non-textual attribute (see column 9, lines 17-18, 27-36 and #120 of Figure 4A wherein Schein et al.

explicitly discloses the scroll bar being visually proportional to the total information in the television schedule program matrix thereby changing the visual appearance of the scroll bar to conform to the information displayed in the matrix.).

Although Schein et al. does disclose an explicit association between the scroll bar and the information of program matrix, Schein et al. does not explicitly disclose a non-textual attribute associated with the scroll bar being modified by an incremental amount. However, it is well known in the art of computer graphics and particular in computer graphical user interface processing that scroll bars can be selected/operated by clicking or selecting them, change an associated non-textual attribute, the attribute being 2D location of the “scroller” within the “trough.” Such a change in visual 2D positioning of the "scroller" within the "trough" is shown in accordance with the number of times the scroll bar is selected/operated based upon the amount of information being scrolled through vs. the amount of information being displayed at one time (Official Notice). It would have been obvious to one of ordinary skill in the art at the time the invention was made for Schein et al. who teaches utilizing scroll bars in a television EPG display, to use a scroll bar which modifies its visual appearance incrementally based upon amount of data available for display vs. amount of data displayed at one time, because it is well known in the art that scroll bars are known to operate in such a manner and are utilized to scroll through a multitude of data. (see *Response to Arguments* below)

In reference to claim 11, claim 11 is equivalent in scope to claim 1 and is therefore rejected under similar rationale. In addition to the rationale applied to claim 11, claim 11 recites an apparatus comprising a processor and memory configured to store computer readable instructions that when executed, cause the processor to perform the steps as recited. Schein et al.

discloses the invention to comprise of a system for use with the remote control, the system made up of a computer which further comprises a processor and memory (i.e. hard drive and disk input) that embodies a computer program providing the software needed for receiving, organizing and displaying data for the television program guide (see columns 6-7, lines 60-41 and Figure 3).

In reference to claim 21, claim 21 is equivalent in scope to claim 1 and is therefore rejected under similar rationale. In addition to the rationale applied to claim 21, claim 21 recites a physical machine-readable storage medium embodying a sequence of instructions executable by a machine to perform a method as recited. Schein et al. discloses the invention to comprise of a system for use with the remote control, the system made up of a computer which further comprises a processor and memory (i.e. hard drive and disk input) that embodies a computer program providing the software needed for receiving, organizing and displaying data for the television program guide (see columns 6-7, lines 60-41 and Figure 3).

Response to Arguments

4. Applicant's arguments, see page 6 of Applicant's Remarks, filed 08/27/08 and the remarks presented in the interview summary of 08/01/08, with respect to the objection of the specification have been fully considered and are persuasive. Therefore, the objection to the specification has been withdrawn.

5. Applicant's arguments, see page 6 of Applicant's Remarks, filed 08/27/08, with respect to the objection of claim 21 have been fully considered and are persuasive. Therefore, the objection of claim 21 has been withdrawn since minor informalities have been corrected for.

6. Applicant's arguments, see pages 6-7 of Applicant's Remarks, filed 08/27/08, with respect to the 35 USC 101 rejection of claims 11-17 have been fully considered and are persuasive. Therefore, the 35 USC 101 rejection of claims 11-17 has been withdrawn.

7. Applicant's arguments, see page 7 of Applicant's Remarks, filed 08/27/08, with respect to the 35 USC 112 2nd paragraph, rejection of claims 1-7 and 11-17 have been fully considered and are persuasive. Therefore, the 35 USC 112 2nd paragraph rejection of claims 1-7 and 11-17 has been withdrawn since the previous wording of the claims has been rewritten.

8. Applicant's arguments filed 08/27/08 have been fully considered but they are not persuasive.

In reference to claims 21-27, Applicant argues the 35 USC 101 rejection of claims 21-27 such that Applicant believes the term "physical machine-readable storage medium" satisfies 35 USC 101 (see page 7 of Applicant's Remarks).

In response, the Office disagrees and states, it is because the specification offers the possibility of any type of medium being of non-statutory (i.e. one that carries waves, propagation signals etc) type that the claims still remain rejected under 35 USC 101. The mere fact that the claims recite a "physical storage medium" does not automatically warrant a statutory limitation especially when the specification suggests to one of ordinary skill in the art that any type of medium can be deemed a propagation signal medium, carrier wave etc. type medium which is of course, seen as non-statutory. In other words, even the amended "physical" term does not clearly differentiate a statutory from nonstatutory medium, in this case, because it is unclear whether the communication medium is to be considered such. Therefore, the Office maintains its rejection, based upon such reasoning, of claims 21-27 under 35 USC 101.

Also, Applicant argues that the interpretation of moving a scroller of a scrollbar constitutes a selection as described above and in regards to claims 1, 11 and 21 (see page 7 of Applicant's Remarks). Further, Applicant states that there is no correspondence between the modification of the position of the scroller within the trough and the number of times that the scrollbar has been selected while further stating that it would be nearly impossible to determine if the scroller has been selected much less a number of times, since the scroller begins and ends at the same position (see page 7 of Applicant's Remarks). Therefore, Applicant states that Schein et al. fails to teach the amended feature of claims 1, 11 and 21.

In response, the Office firmly disagrees. As is known to one of ordinary skill in the art, a scroller is utilized to pan up/down, left/right through a document/webpage/file etc. displayed on a computer display screen. Therefore, in order to operate correctly, the scroller does in fact have a beginning and ending position however they are not at the same position. It is well known in the art that when scrolling through a document/webpage/file the scroller starts at one location and ends at another different location within the trough of the scrollbar. Further, it is well known that a manner of operation of the scrollbar is to click on it, or select it thereby moving the scroller within the trough to a new position, with additional clicks of the scroller providing for the additional positioning of the scroller location in the trough. Therefore, if one were to select the scrollbar x amount of times, dependent upon the length or width of the document/webpage/file displayed for scrolling, the scroller would have been positioned in x different positions. Therefore, the Office believes that the combination of Schein et al. and what is well known in the art, clearly discloses all of the claim limitations of claims 1, 11 and 21 respectively.

Allowable Subject Matter

9. Claims 12-17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Antonio Caschera whose telephone number is (571) 272-7781. The examiner can normally be reached Monday-Thursday and alternate Fridays between 7:00 AM and 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kee Tung, can be reached at (571) 272-7794.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, D.C. 20231

or faxed to:

571-273-8300 (Central Fax)

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office whose telephone number is (571) 272-2600.

/Antonio A Caschera/

Examiner, Art Unit 2628

Temporary Full Signatory Authority

11/6/08